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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 DESIGN COLLECTION, INC., a
12 California Corporation,

13 Plaintiff,

14 vs.
15

16 KIT AND HEATHER DESIGNS doing
17 business as “Fiveloaves Twofish”, a
18 California Corporation; BARNEYS
19 NEW YORK, INC., a Delaware
20 Corporation; NORDTROMS, INC, a
Washington Corporation; and, DOES 1-

21 Defendants.
22

Case No.:

**PLAINTIFF’S COMPLAINT FOR
COPYRIGHT INFRINGEMENT**

Jury Trial Demanded

23
24 Design Collection, Inc., by and through its undersigned attorneys, hereby prays
25 to this honorable Court for relief based on the following:

26 **JURISDICTION AND VENUE**
27

1 8. Plaintiff is informed and believes and thereon alleges that Defendant DOES
2 1 through 10, inclusive, are manufacturers and/or vendors of garments to Defendants
3 (as specified above) which DOE Defendants have manufactured and/or supplied and
4 are manufacturing and/or supplying garments comprised of fabric printed with
5 Plaintiff's copyrighted designs (as hereinafter defined) without Plaintiff's knowledge
6 or consent or have contributed to said infringement or other parties not yet identified
7 who have infringed Plaintiff's copyrights, have contributed to the infringement of
8 Plaintiff's copyrights, or have engaged in one more of the wrongful practices alleged
9 herein. The true names, whether corporate, individual or otherwise of Defendant
10 DOES 1-4, inclusive, are presently unknown to Plaintiff, which therefore sues said
11 Defendants by such fictitious names and will seek leave to amend this complaint to
12 show their true names and capacities when same have been ascertained.

13 9. Plaintiff is informed and believes and thereon alleges that at all times
14 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
15 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
16 at all times acting within the scope of such agency, affiliation, alter-ego relationship
17 and/or employment; and actively participated in or subsequently ratified and
18 adopted, or both, each and all of the acts or conduct alleged, with full knowledge of
19 all the facts and circumstances, including, but not limited to, full knowledge of each
20 and every violation of Plaintiff's rights and the damages to Plaintiff proximately
21 caused thereby.

22 **FIRST CLAIM FOR RELIEF**

23 (For Copyright Infringement – Against All Defendants, and Each)

24 10. Plaintiff repeats, realleges, and incorporates herein by reference as though
25 fully set forth, the allegations contained in the preceding paragraphs of this
26 Complaint.
27

1 11. Plaintiff is the owner of an original embroidery design, which Plaintiff has
2 allocated the internal designation REFLECTION SEQ 10237 (“Subject Design”),
3 and has registered with the United States Copyright Office.

4 12. Prior to the acts complained of herein, Plaintiff sampled and sold fabric
5 bearing Subject Design to numerous parties in the fashion and apparel industries.

6 13. Plaintiff is informed and believes and thereon alleges that following its
7 distribution of the Subject Design, Defendants, and each of them, distributed and/or
8 sold fabric and/or garments featuring substantially similar artwork (hereinafter
9 “Subject Product”) without Plaintiff’s authorization, including but not limited to:

10 a. products sold by BARNEYS under SKU No. 00505035983514, Style
11 No. Style # 504141706 and bearing the label “fiveloaves twofish”
12 and RN 132326, indicating that it was manufactured by or for KIT
13 AND HEATHER;

14 b. products sold by NORDSTROM under item no. 846200

15 14. Images of the Subject Design and Subject Product are set forth below:

16 **Subject Design**



Subject Product Exemplar



1 15. Plaintiff is informed and believes and thereon alleges that KIT AND
 2 HEATHER'S website states at
 3 [http://fiveloavestwofishclothing.com/shop/shop/fashion/cotillion-special-](http://fiveloavestwofishclothing.com/shop/shop/fashion/cotillion-special-occasion/just-peachy/)
 4 [occasion/just-peachy/](http://fiveloavestwofishclothing.com/shop/shop/fashion/cotillion-special-occasion/just-peachy/) that the Subject Product is available at www.nordstrom.com,
 5 at [http://shop.nordstrom.com/s/fiveloaves-twofish-just-peachy-fit-flare-dress-big-](http://shop.nordstrom.com/s/fiveloaves-twofish-just-peachy-fit-flare-dress-big-girls/3847109?origin=keywordsearch-personalizedsort&contextualcategoryid=2375500&fashionColor=&resultback=0&cm_sp=personalizedsort-_searchresults-_1_1_A)
 6 [girls/3847109? origin=keywordsearch-](http://shop.nordstrom.com/s/fiveloaves-twofish-just-peachy-fit-flare-dress-big-girls/3847109?origin=keywordsearch-personalizedsort&contextualcategoryid=2375500&fashionColor=&resultback=0&cm_sp=personalizedsort-_searchresults-_1_1_A)
 7 [personalizedsort&contextualcategoryid=2375500&fashionColor=&resultback=0&c](http://shop.nordstrom.com/s/fiveloaves-twofish-just-peachy-fit-flare-dress-big-girls/3847109?origin=keywordsearch-personalizedsort&contextualcategoryid=2375500&fashionColor=&resultback=0&cm_sp=personalizedsort-_searchresults-_1_1_A)
 8 [m_sp=personalizedsort-_-searchresults-_-1_1_A](http://shop.nordstrom.com/s/fiveloaves-twofish-just-peachy-fit-flare-dress-big-girls/3847109?origin=keywordsearch-personalizedsort&contextualcategoryid=2375500&fashionColor=&resultback=0&cm_sp=personalizedsort-_searchresults-_1_1_A).

9 16. Plaintiff is informed and believes and thereon alleges that Defendants, and
 10 each of them, had access to the Subject Design including, without limitation, through
 11 (a) access to Plaintiff's showroom and/or design library; (b) access to illegally
 12 distributed copies of Subject Design by third-party vendors and/or DOE Defendants,
 13 including without limitation international and/or overseas converters and printing
 14 mills; (c) access to Plaintiff's strike-offs and samples, and (d) access to garments in
 15 the marketplace manufactured with lawfully printed fabric bearing Subject Design.

16 17. Plaintiff is informed and believes and thereon alleges that one or more of
 17 the Defendants manufactures garments and/or is a garment vendor. Plaintiff is
 18 further informed and believes and thereon alleges that said Defendant(s), and each of
 19 them, has an ongoing business relationship with Defendant retailers, and each of
 20 them, and supplied garments to said retailers, which garments infringed the Subject
 21 Design in that said garments were composed of fabric which featured unauthorized
 22 print designs that were identical or substantially similar to the Subject Design, or
 23 were an illegal modification thereof.

24 18. Plaintiff is informed and believes and thereon alleges that Defendants, and
 25 each of them, infringed Plaintiff's copyright by creating, making and/or developing
 26 directly infringing and/or derivative works from Subject Design and by producing,
 27

1 distributing and/or selling Subject Product through a nationwide network of retail
2 stores, catalogues, and through on-line websites.

3 19. Due to Defendants', and each of their, acts of infringement, Plaintiff has
4 suffered damages in an amount to be established at trial.

5 20. Due to Defendants', and each of their, acts of copyright infringement as
6 alleged herein, Defendants, and each of them, have obtained profits they would not
7 otherwise have realized but for their infringement of Subject Design. As such,
8 Plaintiff is entitled to disgorgement of Defendants', and each of their, profits
9 attributable to the infringement of Subject Designs in an amount to be established at
10 trial.

11 21. Plaintiff is informed and believes and thereon alleges that Defendants, and
12 each of them, have committed copyright infringement with actual or constructive
13 knowledge of Plaintiff's rights such that said acts of copyright infringement were,
14 and continue to be, willful, intentional and malicious.

15
16 **PRAYER FOR RELIEF**

17 Wherefore, Plaintiff prays for judgment as follows:

- 18 a. That Defendants—each of them—and their respective agents and
19 servants be enjoined from importing, manufacturing, distributing,
20 offering for sale, selling or otherwise trafficking in any product that
21 infringes Plaintiff's copyrights in Subject Design;
- 22 b. That Plaintiff be awarded all profits of Defendants, and each of them,
23 plus all losses of Plaintiff, the exact sum to be proven at the time of trial,
24 or, if elected before final judgment, statutory damages as available under
25 the Copyright Act, 17 U.S.C. § 101 et seq.;
- 26 c. That Plaintiff be awarded its attorneys' fees as available under the
27 Copyright Act U.S.C. § 101 et seq.;

- d. That Plaintiff be awarded pre-judgment interest as allowed by law;
- e. That Plaintiff be awarded the costs of this action; and
- f. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

Plaintiff demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P. 38 and the 7th Amendment to the United States Constitution.

Dated: January 28, 2016

DONIGER/BURROUGHS

By: /s/ Stephen M. Doniger
Stephen M. Doniger, Esq.
David Shein, Esq.
Attorneys for Plaintiff